

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO LIBAG Y CABADING, ACCUSED-APPELLANT.

G.R. No. 68997. April 27, 1990

Ponente: PARAS, J.

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PARAS, J.:

Roberto Libag y Cabading, found guilty beyond reasonable doubt of violating Section 4, Article II of Republic Act No. 6425 (Dangerous Drugs Act of 1972 as amended) by the Regional Trial Court, First Judicial Region, Branch V, Baguio City and sentenced to suffer the penalty of imprisonment for life, to pay a fine of P20,000.00 and costs, now seeks a reversal of the said decision and prays for his acquittal on the ground that the trial court erred in finding him guilty for the following reasons -

"1. THE TRIAL COURT CORRECTLY DISRE-GARDED THE INHERENTLY HEARSAY TESTIMONY OF THE TWO ARRESTING OFFICERS, THE ALLEGED "BUYER" NOT HAVING BEEN PRESENTED AS A WITNESS.

"2. THE POLICE OFFICERS, THROUGH THEIR INFORMER, INSTIGATED THE COMMISSION OF THE OFFENSE;

"3. THE FISCAL CONDUCTED THE PRELIMINARY INVESTIGATION AND FILED THE INFORMATION AGAINST THE ACCUSED-APPELLANT ONLY IN VIOLATION OF RULE 110, SECTION 1, REVISED RULES OF COURT WHICH REQUIRES THAT CRIMINAL ACTION BE COMMENCED AGAINST ALL PERSONS WHO APPEAR TO BE RESPONSIBLE FOR THE OFFENSE CHARGED;

"4. THE TRIAL COURT CONVICTED THE ACCUSED-APPELLANT NOTWITHSTANDING THE INHERENT INCREDIBILITY OF THE EVIDENCE FOR THE PROSECUTION AND THE MATERIAL CONTRADICTIONS IN THE TESTIMONY OF THE TWO ARRESTING OFFICERS;

"5. THE TRIAL COURT FAILED TO APPLY BOTH THE LAW AND APPLICABLE JURISPRUDENCE AND THEREBY CONVICTED THE ACCUSED-APPELLANT NOTWITHSTANDING INDUBITABLE EVIDENCE THAT THE LATTER DID NOT KNOW THAT THE PLASTIC BAG, TOPPED BY 'PECHAY' CONTAINED MARIJUANA FLOWERING TOPS AT THE BOTTOM." (p. 102, Rollo)

The information filed against the accused alleged:

"That on or about the 7th day of November, 1983, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and feloniously attempt to sell, deliver, give away to another and distribute three (3) kilos of marijuana flowering tops, a prohibited drug, well-knowing that the sale, delivery and distribution to another of such drug is prohibited without authority of law to do so, in violation of the aforesaid law.

"CONTRARY TO LAW." (p. 4, Rollo)

That guilt was established beyond reasonable doubt was justified by the trial court in its now assailed decision in this wise -

"The prosecution has established an overwhelmingly convincing case against Libag. In fact, he could do nothing but admit having delivered the plastic bag containing the marijuana. His pretension that he did not know the contraband contents of the bag as he was merely sent on an errand to deliver it, is incredulous, if not preposterous. It is simply unbelievable that three complete strangers would pick on him to do the errand considering its highly dangerous nature and for him to oblige for the paltry sum of P2.00. What is more, it appears odd that he did not even ask for the names of the three men who supposedly sent him on the errand so he could give the corresponding information to the other end nor did he inquire from them to whom in particular he was going to deliver the bag. All these would only suggest that his line of defense is the product of desperation." (p. 8, Rollo)

The prosecution's evidence upon which the finding of guilt beyond reasonable doubt was based was narrated by the trial court thus -

"Cpl. Eduardo Garcia and Pfc. Virgilio Visperas, both of the Vice and Narcotics Division of the Baguio City Police Station, testified that in the afternoon of November 7, 1983, at about 1:00 o'clock, one of their informers reported that two male persons were offering to sell him marijuana.

"Forthwith, the late Lt. Manansala, then the Chief of the Division, prepared a buy-bust operation. He told the informer to contact the would-be sellers and make an arrangement for the purchase of five kilos of the prohibited stuff. In the company of Cpl. Garcia and Visperas, the informer proceeded to Elena's Lunch on Abanao Street where the latter made contact with the would-be sellers. After making the contact, the informer told Cpl. Garcia and Visperas that the deal would be carried out at the Leisure Lodge on Magsaysay Avenue later in the afternoon because the would-be sellers would still fetch the stuff from La Trinidad, Benguet.

"After preparing the entrapment or boodle money, Cpl. Garcia, Pfc. Visperas and the informer proceeded to the Leisure Lodge to wait for the would-be sellers. That was at about 3:00 o'clock. At about 4:15 o'clock, two male persons arrived, one of whom was carrying a multi-colored plastic bag. The person carrying the bag entered the Lodge while his companion stayed behind at the driveway.

"Once inside the Lodge, the person carrying the bag handed the said bag to the informer who was in front of Room 104. Thereupon, the informer gave the pre-arranged signal that delivery had been made. Pfc. Visperas, who was at the lobby about 10 to 12 meters away, closed in and arrested the person who turned out to be the herein accused Roberto Libag. Libag's companion was able to elude apprehension.

"Still at the Lodge, the plastic bag (Exhibit 'E') delivered by Libag to the informer was examined and was found to contain three (3) separate bundles of suspected dried marijuana flowering tops (Exhibit 'B', 'C' and 'D'). Together with the confiscated items, Libag was brought to the police station where he was searched but only a lighter was found in his person.

"Both Cpl. Garcia and Pfc. Visperas did not see what the informer did with the entrapment money. According to Cpl. Garcia, the informer was about to pull out the money from his pocket when Libag's arrest was effected. The money was later on returned to Lt. Manansala as it belonged to him.

"The plastic bag and its contents were promptly referred to the PC Crime Laboratory at Camp Dangwa, La Trinidad, Benguet, for chemical analysis (Exhibit 'A'). Forensic Chemist Carlos Figueroa performed the examination and found out that the three bundles of dried flowering tops contained in the bag were positive to the test for marijuana (Exhibit 'F'). The stuff had an aggregate weight of 3.20 kilos, and Exhibit 'B' - 9.5 kilos; Exhibit 'C' - 1.10 kilos, and Exhibit 'D' - 1.15 kilos)." (pp. 6-7, Rollo)

On the other hand, the accused narrated a different version of what transpired. Also as stated by the trial court -

"Libag, a native of Kapangan, Benguet, who was then above 17 but below 18 years of age, having been born on December 1, 1965 (Exhibit '1'), admitted that he delivered a plastic bag to a big house near the Philippine Rabbit Terminal on Magsaysay Avenue, Baguio City, in the afternoon of November 7, 1983. However, he disclaimed ownership of the bag and knowing its contents, except for the pechay on top. He further asserted that he handed the bag to a woman in the big house.

"Narrating how he came upon the bag, Libag declared that he was then on Magsaysay Avenue waiting for a ride to La Trinidad when three (3) men, one of whom was holding a bag, approached him and requested him to deliver the bag to a big house nearby. At first, he refused but upon being offered P2.00 for the errand, he finally agreed. He took the bag to the big house and on seeing a woman there, he told her that he was leaving the bag. However, the woman asked him to bring the bag to a room inside the house. The woman opened the door to the room and once Libag was inside, she followed him and then locked the door. The woman threw a stone at another door and two policemen appeared. They inspected the bag and found marijuana inside. Despite his protestations that the bag did not belong to him, Libag was taken by the policemen to the police station where he was frisked but only a lighter was found in his person.

"Libag also tried to show that he was then in Baguio only to buy bean seedlings and that he had never been to Elena's Lunch.

"Libag was corroborated by Alsado A-at, a townmate in Kapangan, Benguet, who was then allegedly also on Magsaysay Avenue at the time, waiting for a ride for La Trinidad, and he thus over-heard the conversation between Libag and the three men who requested Libag to deliver the bag. But A-at went on further to say that the bag is prosecution's evidence marked Exhibit 'E' with its pechay content visible at the top." (pp. 7-8, Rollo)

The trial court found that the evidence of the prosecution did not sufficiently prove a case of illegal sale of marijuana. Nonetheless it found that there was consummated delivery of marijuana. Thus,

"Coming now to Libag's degree of culpability, the prosecution evidence does not sufficiently show a case of illegal sale of the prohibited stuff. This is for the reason that the police informer who arranged the deal was not presented as a witness. The testimonies of Cpl. Garcia and Pfc. Visperas that a sale was intended are hearsay and bereft of probative value since they have no first-hand knowledge of the real transaction between the informer and Libag.

"Nonetheless, consummation of the delivery of the marijuana by Libag to the informer has been proven within the context of the term 'deliver' under the law which is defined as a 'person's act of knowingly passing a dangerous drug to another personally or otherwise; and by any means, with or without consideration' (Article I, Section 2(f), R.A. No. 6425).

"Although the indictment charges merely an attempt, while the proof has established a consummated offense, the variance is of no moment for under Article IV, Section 21(b) of the law violated, an attempted delivery of dangerous drugs is punished by the same penalty as that prescribed for consummated delivery.

"The imposable penalty is life imprisonment to death and a fine of P20,000.00 to P30,000.00 (Article II, Section 4).

"Considering that Libag was, at the time of the commission of the offense, a minor above 17 but below 18 years of age, the Court shall impose on him the minimum penalty although strictly speaking his minority is not a mitigating circumstance since the violation is against a special law and not against the Revised Penal Code." (pp. 8-9, Rollo)

This Court once said in *People v. Ale*, 145 SCRA 50, 58 -

"Judges trying narcotics cases are often placed in a non-enviable predicament. The threat posed by drugs

against human dignity and the integrity of society is malevolent and incessant. Courts should not hamper, in any way, the dedicated although sometimes puny efforts to stem the giant menace. Courts should not unwittingly tie down the hands of narcotic agents whose work is already difficult and dangerous enough without legal and procedural obstacles to successful prosecutions.

"At the same time, we cannot close our eyes to the many reports of evidence being planted on unwary persons either for extorting money or exacting personal vengeance. By the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grains of heroin can be planted in pockets or hands of unsuspecting provincial licks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Courts must also be extra-vigilant in trying drug charges lest an innocent person is made to suffer the unusually severe penalties for drug offenses."

In the instant case, We find that the evidence for the prosecution, upon which the trial court based its finding of guilt beyond reasonable doubt, is not strong enough to convince a reasonable mind to conclude that the herein accused-appellant had knowledge that the bag he delivered contained marijuana.

The Trial Court, in its decision, said: "Cpl. Eduardo Garcia and Pfc. Virgilio Visperas, both of the Vice and Narcotic Division of the Baguio City Police Station, testified that in the afternoon of November 7, 1983, at about 1:00 o'clock, one of their informers reported that two male persons were offering to sell him marijuana." (p. 1, Decision)

"Forthwith, the late Lt. Manansala, then the Chief of the Division, prepared a buy-bust operation. He told the informer to contact the would-be sellers and make an arrangement for the purchase of five kilos of the prohibited stuff. In the company of Cpl. Garcia and Visperas, the informer proceeded to Elena's Lunch on Banao St. where the latter made contact with the would-be sellers. After making the contact, the informer told Cpl. Garcia and Visperas that the deal would be carried out at the Leisure Lodge on Magsaysay Avenue later in the afternoon because the would-be sellers would fetch the stuff from La Trinidad, Benguet." (Id.)

It must be noted that the testimony of the police officers summarized by the Trial Court, as quoted above, was based not on their personal knowledge of what transpired between the informer and the "two male persons" but on what their alleged would-be buyer narrated, and it is the alleged agreement to sell forged between the "buyer" and the "two male persons" that the Trial Court relied upon to conclude that the accused-appellant knew he was carrying marijuana flowering tops in the plastic bag, and that he carried them and knowingly delivered them to the "buyer" pursuant to the alleged agreement to sell. It is for that reason that it becomes necessary to present the alleged poseur-buyer as witness to testify on the said agreement to sell.

During the trial, Pfc. Visperas, one of the arresting officers was asked on cross-examination this question:

"Can you tell us the name of that informer ("buyer")?"

The fiscal promptly objected to the question and the Trial Court sustained the objection. (t.s.n., February 1, 1984, p. 13) Likewise, when the second arresting officer, Cpl. Eduardo Garcia was being cross-examined, he was asked the question:

"Q. Are you at liberty to inform us who your informer was?"

A. I'm sorry, we could not give you or tell you the identity of my informer."

Before the prosecution concluded the presentation of testimonial evidence, Fiscal Carbonell manifested in open court:

"I was trying to convince my witnesses, the arresting officers, to reveal the identity of their informer but they

seem to be reluctant, Your Honor. However, may we be given time to convince them, to convince these police officers?" (t.s.n., March 6, 1984, p. 9).

At the next hearing, however, Fiscal Carbonell informed the Trial Court that "We are ready to close the evidence for the Government Prosecution, Your Honor." (t.s.n., March 26, 1984).

It may not be amiss to say that the prosecution willfully suppressed evidence vital in the case. Apparently, Fiscal Carbonell was aware of the consequence of such action when he informed the Trial Court that he will try to convince his witnesses to reveal the identity of the alleged would-be-buyer. Apparently too, the police officers were unmoved. Thus, not only had the prosecution failed to present a material witness, but by refusing to disclose the identity of their poseur-buyer, the accused-appellant was deprived of the opportunity to require production of the said witness by compulsory process. While it is true that the non-revelation of the identity of an informer is a standard practice in drug cases, such is inapplicable in the case at bar as the circumstances are different. The would-be buyer's testimony was absolutely necessary because it could have helped the Trial Court in determining whether or not the accused-appellant had knowledge that the bag contained marijuana, such knowledge being an essential ingredient of the offense for which he was convicted. The testimony of the poseur-buyer (not as an informer but as a "buyer") as to the alleged agreement to sell therefore became indispensable to arrive at a just and proper disposition of this case.

The presumption that the accused-appellant had knowledge that he was delivering marijuana is a rebuttable presumption. Against this presumption, the accused has consistently denied such knowledge. The testimony of the would-be-buyer could have confirmed the claim of the accused that he did not know that the bag he delivered contained marijuana and thus should have resulted in his acquittal. Absent such evidence, We are constrained to reverse the Trial Court's judgment of conviction for failure of the prosecution to sufficiently prove an essential element of the offense charged. Clearly, the only basis for the judgment of conviction were the testimonies of the two police officers, uncorroborated by any other evidence. Fundamental is the rule that the prosecution has the burden of proving the guilt of the accused beyond reason-able doubt. It is not incumbent upon the accused to disprove his guilt. Stated otherwise, the prosecution must rely on the strength of its own evidence and not on the weakness of the evidence for the defense.

(a) Cpl. Eduardo Garcia testified in a manner that conveyed the idea that the "buyer" was a male. Thus, when asked the distance of the "buyer" from the accused at the time of arrest, the witness replied: "He is only facing the accused in front of the door of Room 104" (t.s.n., March 1, 1984, p. 8). When asked whether the "buyer" was able to deliver the money to the accused, the witness said that "he was not able to do so" (Id.). When asked what the "buyer" was doing with the money at the time of the arrest, the witness replied: "he placed it ... he was about to pull out from his pocket."

In the Joint Affidavit of witnesses Visperas and Garcia, they declared that "they received reliable information from one of our "buyers" that he was able to contact two (2) suspected male pushers ... they advised him to order five kilos of marijuana leaves ..." (Exh. 'G').

These declarations leave no doubt that the unidentified "buyer" referred to by the two police officers was a male person. Yet, the accused in his uncontradicted testimony was that he left a plastic bag found later to contain mari-juana flowering tops to a woman in front of a room inside Leisure Lodge and that he was arrested after he had done so.

(b) Pfc. Visperas said that the "buyer" had something like P5,000.00 of which P2,000.00 was in cash, and the others were sheets of bond paper presumably made to look like money. (t.s.n., Feb. 1, 1984, p. 10).

In the course of his testimony, Pfc. Visperas declared that the "buyer" had P5,000.00 of which P2,000.00 was in

cash and the rest consisted of what he described was "boodle" money or bond paper presumably cut to the required size to buy five (5) kilos of marijuana. (Id., p. 14, t.s.n., Feb. 1, 1984, p. 10).

Cpl. Garcia, however declared that at the time Pfc. Visperas and he proceeded to Leisure Lodge, the "buyer" received P3,000.00 of which P1,000.00 was in cash and the rest in 'model' money consisting of paper folded to look like real money (t.s.n., March 6, 1984, p. 6).

(c) The trial court in its decisions said: "Both Cpl. Garcia and Pfc. Visperas did not see what the "buyer" did with the entrapment money. According to Cpl. Garcia, the "buyer" was about to pull out the money from his pocket when Libag's arrest was effected. The money was later on returned to Lt. Manansala as it belonged to him." (p. 2, Decision)

There is no doubt that upon his arrest, the accused was frisked and the only object found on his body was a lighter - no money was found with him (t.s.n., March 6, 1984, p. 7). The "buyer" was not able to deliver the money to him. (Id., p. 8).

No mention was made of any money which the "buyer" had which the latter pulled out of his/her pocket to be handed over to the accused. The most that Pfc. Visperas was able to say was "I presume it was handed to the pusher, sir." (t.s.n., Feb. 1, 1984, p. 12). He was only 10 to 20 meters away from the "buyer" and the accused (Id., p. 15). Notwithstanding the short distance, he did not see the "buyer" hand the money to the accused. (Id.).

(d) During the trial, the police officers testified and confirmed the presence of two suspects. But the accused was not investigated about his possible associated activities, the source or sources of marijuana, the persons who sell them, where they are sold, to whom they are sold and whether or not they belong to a criminal syndicate. The failure to conduct this investigation is most unusual unless the policemen and later the investigating fiscal knew that the accused was what he represented to be - an innocent by-stander - a person who unknowingly participated in an unlawful act.

Due to the above-stated contradictions and inaccuracies of the evidence for the prosecution, the evidence for the defense merits careful evaluation.

According to appellant he was waiting for a ride at the Philippine Rabbit Station when three (3) men one of whom was holding a bag, approached him and requested him to deliver the bag to a big house nearby. At first, he refused but upon being offered P2.00 for the errand, he finally agreed. He took the bag to the big house and on seeing a woman there, he told her that he was leaving the bag. However, the woman asked him to bring the bag to a room inside the house. The woman opened the door to the room and once Libag was inside, she followed him and then locked the door.

This testimony was not contradicted by the prosecution.

Nevertheless, the trial court found the evidence of guilt against the accused "overwhelming". "His pretension that he did not know the contraband content of the bag or he was merely sent on an errand to deliver it, is incredulous, if not preposterous. It is simply unbelievable that three complete strangers would pick on him to do the errand considering its highly dangerous nature, and for him to oblige for the paltry sum of P2.00. What is more, it appears odd that he did not even ask for the names of the three men who supposedly sent him on the errand so he could give the corresponding information to the others nor did he inquire from them to whom in particular he was going to deliver the bag. All of these would only suggest that this line of defense is a product of desperation." (p. 8, Rollo)

We cannot in conscience agree with the opinion of the Trial Court. The accused-appellant was a penniless youth

who was offered the opportunity to earn P2.00 by carrying a plastic bag believed by him to contain "pechay" to a woman at a nearby building. The Leisure Lodge happened to be a motel. The accused apparently did not know what sort of establishment it was. To him it was a "big house". The door was opened to him by a woman. He did not expect to be paid by the person who will receive the bag, hence, after making the delivery he made a move to leave at once. But this was not proceeding according to the plan. The male "buyer" who was not too far away neither had the opportunity to receive the plastic bag nor to pull out his money, much less pretend to comb his hair. The police had to move in to effect the arrest.

This could account for the inexplicable failure to present the poseur buyer as a witness. His testimony would confirm the statement of the accused that he had no knowledge that the plastic bag contained marijuana flowering tops. Also, this could explain why the poseur buyer was not able to deliver the marked money to the accused. The bag was delivered to the wrong person.

The police officers talked of a "second-man" who was allegedly the companion of the accused at the time the plastic bag was delivered. But this "second-man" was not arrested nor charged even as a John Doe defendant. The accused was not even investigated about the identity of this "second-man". Could it be that there was no "second-man"?

If the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction. (People v. Parayno, 24 SCRA 3, People v. Ale, supra).

As stated in the case of People v. Alcaraz, (G.R. No. 66509, April 25, 1985):

"x x x The Constitution and the law are clear that in case of reasonable doubt, the accused must be acquitted. Our jurisprudence is built upon the concept that it is preferable for the guilty to remain unpunished than for an innocent person to suffer a long prison term unjustly."

Finally, the information accused Roberto Libag of the "attempt to sell, deliver, give away to another and distribute three (3) kilos of marijuana flowering tops, a prohibited drug well-knowing that the sale, delivery and distribution to another of such drug is prohibited x x x.

It is basic that in a criminal case, the prosecution avers the guilt of the accused who is presumed to be innocent until the contrary is proved. Therefore, the prosecution must prove such guilt by establishing the existence of all the elements of the crime charged. In so doing, the prosecution must rely on the strength of its own evidence, not on the weakness of the defense. Clearly, one of the elements of the offense is that the accused knowingly delivered a dangerous drug to another. The prosecution must prove know-ledge of the accused, not that he knew that marijuana is classified as a dangerous drug, but that he knew as marijuana the contents of the plastic bag he delivered.

The evidence of the prosecution definitely is wanting on this point.

PREMISES CONSIDERED, We hold that the guilt of appellant Roberto Libag has not been established beyond reasonable doubt.

WHEREFORE, for lack of proof of his guilt beyond reasonable doubt, Roberto Libag y Cabading is hereby **ACQUITTED** of the crime charged. Costs de oficio.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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